

8(a) Firm to Complete and submit with Request for JV Approval

Solicitation History:

(Sample Language) The Navy intends to grant [multiple award Design/Build Multiple Award Contract (MAC) contracts] to 8(a) firms to procure some of its major design/build projects for the next several years. The competition will be limited to the 8(a) Program Participants serviced by the SBA's South and North Carolina District Offices, and program participants with bona fide offices within those servicing areas. A maximum of six (6) contracts will be awarded. Each contract is for a base year and four (4) one-year options. The maximum annual value of each contract is \$_____ per year per contractor. Task order values may range from \$_____ to \$____ million. Future task orders will be competed among the successful offerors. The government guarantees \$5,000 each year to each awardee. The contract will be provide for design/build construction, renovation alteration, and repairs to Government facilities in the Hampton Roads area, Virginia and North Carolina.

Description of Project:

(Sample Language) The project in which the Joint Venture agreement will be used is for the Department of The _____ Command, location _____. The anticipated award amount is \$_____ (seed money) for the «ProjectName» for the overall effort. Each contract will have a maximum value of \$____. This project is considered general construction contracting. The solicitation bid date is ____ with anticipated award date of _____.

Description of the JV:

(Sample Language) The proposed Joint Venture is between «FirmName» («FirmShortName») and «Mentor» («MentorShortName»). «FirmShortName» is 100% owned and SBA certified as an 8(a) small, disadvantaged business. «MentorShortName» is a large non-disadvantaged owned business, and has applied to serve as the mentor in the SBA approved Mentor/Protégé agreement with «FirmShortName». Mentor-Protégé documentation received from the SBA is provided in the JV package binder. The MPA was submitted to SBA HQ on 2/13/06. It is noted here that the JV cannot be approved and the contract cannot be awarded until the MPA is approved.

Specific Resources or Abilities that Participant lacks that make the performance of a JV necessary:

(Sample Language) «FirmName» is primarily a drywall and concrete specialty trades contractor and as such lacks the bonding and design/build technical capability required for this contract. Contracts requiring bonds that are currently held by «FirmShortName» are close to the firm's bonding limit. In addition the firm lacks financial capacity due to the following reasons _____. The firm generated

\$_____ sales and experienced an \$_____ profit.

The Purpose of the JV and specific benefits to be gained by the 8(a) Participant firm
(How will this affect further capabilities of the firm?)

(Sample Language) The purpose of the proposed Joint Venture is solely for design/build construction projects. Upon successful completion of this contract, «FirmShortName» would be able to financially and technically bid on design/build contracts with enhanced financial and technical capacity. Working with «MentorShortName», who has experience with larger design/build contracts, will be a great learning tool «FirmShortName». First-hand experience in the coordination and hands-on scheduling and performing will give «FirmShortName» the knowledge to financially and technically perform on future large-scale design/build projects.

Effect of the JV and the immediate requirement on performance under existing contracts in terms of cash flow, personnel, equipment and facilities.

(Sample Language) This Joint Venture will allow «FirmShortName» to continue performance on current projects without the risk of a cash flow problem, and bringing bonding capacity to its peak. There will be no effect on performance under existing contracts in terms of cash flow, personnel, equipment and facilities. The firm enjoys a positive net worth of \$_____ supporting annual sales of \$_____.

8(a) Participant information:

(Sample Language) «FirmName» is a general contractor, incorporated in the State of Virginia in 1997 who has performed aspects of special trades contracting over the years. «FirmShortName» has been awarded [describe awarded contracts] with the [names of the agencies]. The NAICS code for this contract is ____ – Commercial & Institutional Building Construction (Size Standard - \$__5M).

(Sample Language) Provide narrative describing 8(a) firm's contracts and marketing strategy, i.e., «FirmShortName» is currently performing several contracts in _____ and but has not been involved in any 8(a) Joint Venture Agreements. Subject contract of the JV will not have an impact on current contracts. 8(a) staff is in place at various locations, and the contracts are running smoothly. «FirmName» is a Class A General Contractor in the State of _____.

Joint Venture Partner Information

(Sample Language) «Mentor» («MentorShortName») was incorporated in _____. Since that date the company has become a well-established member of the construction community, specializing in general contracting, Construction, Management, Project Management, Design/Build and Concrete Specialty Contracting. Please visit [provide website] for a complete overview of the company's mission, history, and professional services. «MentorShortName» is currently performing multiple projects under «NACISNane». Reference to the type of projects that demonstrate

«MentorShortName»'s relevant experience as it pertains to this contract is included in the JV package. The company is pre-certified to work in several states in the East and Southeaster Coast area. Professional business licenses are held throughout several cities and counties in the above mentioned areas. «MentorShortName» Construction is not been involved in a Joint Venture with an 8(a) firm at this time.

Statement of percentage of ownership by Disadvantaged Owners

«FirmName» is the only identified certified 8(a) participant, and will control 51% of the Joint Venture.

Individuals and Affiliates / Size

(Sample Language) The partners involved include the following: representing «FirmShortName» is «FirmPincipal»; representing «MentorShortName» is «MentorPrincipal». There is an affiliate associated with «FirmShortName» named _____. The firm submitted a SBA Form 355 – Small Business Administration Application For Small Size determination. The firm remains small considering the affiliation. A size study was not a requirement for «MentorShortName» of this Joint Venture because a Mentor-Protégé agreement has been submitted to SBA HQ for approval on 2/13/06 prior to the Joint Venture agreement.

Financial

(Sample Language) The agreement states in Section ____ (Working Capital Fund) «FirmShortName» will contribute 51% of the working capital and «MentorShortName» will contribute 49% for the initial cash flow for this project. Financial controls and distribution of profits are stated in Sections [5, 6 & 10] of the Joint Venture Agreement.

Employees

(Sample Language) Except for undetermined sub contracts, only individuals are employed by «FirmShortName» or «MentorShortName» will be utilized. As the contract calls for task orders varying number of employees will be utilized relevant to the size and scope of the individual tasks.

Project Management and Administration

(Sample Language) «FirmName» is named the Managing Venturer of the JV Agreement and will maintain project management and administration control as stated in Sections _____. Specifically, _____ and _____, employees of the Managing Venturer shall be designated as the Project Managers responsible for the performance of the contract. _____ an employee of the Managing Venturer and 8(a) graduated participant, shall be designated as a Project Director and the liaison between the Joint Venture Partners. Specific tasks, as they arise throughout the project, will be delegated as to maintain «FirmShortName»'s control over the project.

Equipment

Exhibits A & B specify and provide an itemized description of all major equipment, facilities and other resources each party to the JV will provide.

Conclusion whether all the required provisions have been incorporated and that the provisions of the JV agreement are fair and equitable and for the substantial benefit of the 8(a) Participant.

All of the required provisions have been incorporated into this analysis. Both parties believe this JV Agreement is fair and equitable, and will be of great benefit to «FirmShortName», the 8(a) company.

A conclusion whether the 8(a) Participant brings something of value to the JV in terms of resources and expertise other than its 8(a) status

(Sample Language) «FirmName» provides [specialty trades construction] related expertise to the project. The firm is supplying its portion of the \$50,000 start up capital, employees and equipment as well as management.

Summary:

(Sample Language) Both members of the proposed «JVShortName» have met or exceeded the requirements set out by the Small Business Administration for a JV. The experiences of both organizations match well to successfully complete the «ProjectName». The Joint Venture will perform at least the applicable percentage of the work as required by 13 CFR 124.510 and «FirmShortName» will perform a significant portion of the Contract effort with its own personnel. Portions of the work can be subcontracted to the Joint Venturers or third parties as long as the applicable percentages requirements for the cost of labor are met. Different tasks will be performed with some tasks being performed more substantially by «FirmShortName» than others. The JV entity has combined 3-year average sales in excess of \$_____ which more than adequately supports the estimated value of the contract of \$_____ million. The arrangement is ideal. «FirmShortName» brings ____ years of specialty trades construction experience; «MentorShortName» brings ____ + years of heavy general construction experience directly related to the Design/Build contract SOW. Coupling the capabilities of the JV partners make an extraordinarily strong team.

Narrative:

13 CFR § 124.513 (a) (2) stipulates that a Joint Venture Agreement is admissible where an 8(a) concern:

- a) lacks the necessary capacity to perform the contract on its own.

Comments:

- 1) (Sample Language) «FirmShortName» currently lacks the financial and technical

capacity to successfully complete this design/build contract for the U.S Navy. By joint venturing on the subject solicitation, it can gain the financial capacity and technical experience required to successfully complete future design/build contracts for the U.S. Navy as well as other federal agencies. By gaining this type of experience early in the Developmental Stage of 8(a) certification it can transition and better compete in the open market. Although «FirmShortName» has a 3 years average revenues of \$____, assets of \$____ and a net worth of \$____ it would not have been able to secure the contract of this size on its own financial and technical merits as it lacks the design/build general construction (vs. specialty trades construction) expertise.

b) The JV will be of substantial benefit to the 8(a) firm. Clearly, «FirmShortName» would benefit greatly from the JVA in that it will:

- 1) Mutually beneficial with «MentorShortName» as the arrangement is fair and reasonable to both parties. Both parties have opportunities to benefit and share risk proportionately.
- 2) Learn design/build general construction contracting;
- 3) Establish lasting relationships and be able to participate in, and profit from, and manage and control, the largest contract of the firm's history;
- 4) Receive significant benefits of «MentorShortName»'s formal mentoring via an SBA pending Mentor Protégé Agreement submitted to SBA HQ on ____ and technical and financial resources.
- 5) Receive significant marketing enhancements with the agency, other federal agencies and potential prime contractors as a direct benefit of winning this particular contract.
- 6) The Joint Venture Agreement between «FirmName» and «Mentor» would be of substantial benefit for «FirmShortName», the 8(a) firm. Clearly, «FirmShortName» would benefit greatly because it:
 - lacks the bonding capability to bond this project.
 - lacks the overall financial capacity to support this size of contract.
 - has limited technical experience in this field.
 - has not had the opportunity to work a contract this of this size and nature.
 - lacks the technical and bonding capacity necessary to perform the contract on its own.
- 7) The approval of this Joint Venture would allow «FirmShortName» to participate in, profit from, manage and control the largest contract in it's history. This will open many doors for «FirmShortName», as it will have the opportunity to bid on more design/build contracts once this contract has been successfully completed. This Joint Venture is a "win-win situation" for «FirmName» Time is of the essence. Bid was due ____ with anticipated award date of ____.

«Mentor» brings substantial financial strength, personnel, and managerial and technical resources. Accordingly, «FirmShortName» sought the Mentor Protégé Agreement partnership arrangement and joint venture with an experienced Federal government contractor, «MentorShortName», and together they have formed a very sound, eligible, practical and viable JV agreement.

The information provided herein, including checklist below, and enclosed supporting documentation support the recommendation for approval of the proposed Joint Venture Agreement.

Checklist: Joint Venture Agreement References - Requirements of 13 CFR 124.513

| Significant CFR Requirements | Y/N |
|--|------------|
| Are JV partners individually small and the JV entity small? (If no mentor-protégé agreement) Comments: Firms have an SBA approved MPA dated ____, thereby making the JV small. | |
| Does the 8(a) concern lack capacity? See narrative above. | |
| Is agreement fair to the 8(a) contractor? See narrative above. | |
| Does the agreement provide substantial benefit to 8(a) contractor: See narrative. | |
| Will the 8(a) contractor perform a significant portion of the contract? See narrative above. «FirmShortName» will perform a significant portion of the JV portion. | |

Contents of Agreement

Every JV agreement to perform an 8(a) contract, including those between mentors and protégés authorized by §124.520, must contain a provisions of **13 CFR §124.513 (c)**

Contents of a Joint Venture:

(1)

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| Paragraph __, Page __ | §124.513(c) (1) Purpose. Setting forth the purpose of the JV; |
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(2)

| | |
|-----------------------|--|
| Paragraph __, Page __ | § 124.513 (c) (2) Designating the 8(a) Participant as the managing venturer of the JV and; |
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(2a)

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|-----------------------|--|
| Paragraph __, Page __ | §124.513 (c) (2) Designating an employee of the 8(a) as project manager; |
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(3)

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| Paragraph __, Page __ | §124.513 (c) (3) Stating that not less than 51 percent of the net profits earned by the JV shall be distributed |
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| | to the 8(a) concern; |
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(4)

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| Paragraph __, Page __ | §124.513 (c) (4) Providing for the establishment and administration of a special bank account in the name of the JV; |
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(4a)

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| Paragraph __, Page __ | §124.513 (c) (4)The special bank account shall require the signature of all Participants to the JV; |
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(4b)

| | |
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| Paragraph __, Page __ | §124.513 (c) (4) All payments due the JV for the performance on the 8(a) Contract shall be deposited in the special account; all expenses incurred under the contract will be paid from this account as well; |
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(5)

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| Paragraph __, Page __ | §124.513 (c) (5) An itemized description of all major equipment, facilities, and other resources to be furnished by each participant to the JV, which detailed schedule of cost or value of each; |
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(6)

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| Paragraph __, Page __ | §124.513 (c) (6) A provision specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiation of the 8(a) contract and any subcontracts to the JV; |
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(7)

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| Paragraph __, Page __ | §124.513 (c) (7) Obligating all parties to the joint venture to ensure performance of the 8(a) contract and to complete performance despite the withdrawal of any member; |
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(8)

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| Paragraph __, Page __ | §124.513 (c) (8) Designating the accounting and other administrative records relating to the joint venture be kept in the office of the 8(a), unless approval to keep them elsewhere is granted by the DD upon written request; |
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(9)

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| Paragraph __, Page __ | §124.513 (c) (9) Requiring the final original records be retained by the 8(a) upon completion of the 8(a) contract performed by the JV |
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(10)

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| Paragraph __, Page __ | §124.513 (c) (10) Stating that quarterly financial statements showing ;cumulative contract receipts and expenditures (including salaries of the JV's principals) must be submitted to SBA NLT 45 days after each operating quarter of the JV and; |
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(11)

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| Paragraph __, Page __ | §124.513 (c) (11) Stating the project-end profit and loss statement, including a statement of final profit distribution must be submitted to SBA NLT 90 days after completion of the contract. |
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(d) Performance of work

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| Paragraph __, Page __ | §124.513 (d) Performance of work For any 8(a) contract, including those between mentors and protégé authorized by §124.50, the JV must perform the applicable percentage of work required by §124.510, and the 8(a) partner(s) to the JV must perform a significant portion of the contract. |
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(e)

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| Paragraph __, Page __ | §124.513 (e) Prior approval by SBA. SBA must approve a JV agreement prior to the award of the contract; |
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(g)

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| Paragraph __, Page __ | §124.513 (g) Amendments to the joint venture agreement. SBA must approve all amendments to the JV agreement. |
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(h)

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| Paragraph __, Page __ | §124.513 (h) Inspection of records. SBA may inspect the records of the JV without notice at any time deemed necessary. |
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Further this writer concludes the following:

| CFR Reference: | Yes or No |
|--|-----------|
| 13 CFR 124.513 (a) (2): The 8(a) concern lacks the necessary capacity to perform the contract on its own, and | |
| The agreement is fair and equitable, and | |
| And will be of substantial benefit to the 8(a) concern. | |
| 13 CFR 124.513 (a) (2) (b): ...each concern is small under the size standard corresponding to the SIC (NAICS) assigned to the contract, provided; | |
| 124.513(a)(2)(b)(i): The size of at least one 8(a) Participant to the joint venture is less than one half the size standard corresponding to the (NAICS) assigned to the contract; and | |
| 124.513 (a) (2) (b) (ii) (A): For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the NAICSs code assigned to the contract: or | |
| 124.513 (a) (2) (b) (ii) (B): For a procurement having an employee-based size standard, the procurement exceeds \$10 million; | N/A |
| 124.513 (a) (2) (b) (ii) (B) (2): For sole source and competitive 8(a) procurements that do not exceed the dollar levels identified in paragraph (b) (1) of this section, an 8(a) Participant entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the 8(a) contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the SIC (NAICS) code assigned to the 8(a) contract. | |
| 124.513 (a) (2) (b) (ii) (B) (3): Is the joint venture between a protégé and its approved mentor? | |

* (Sample language, if applicable) Mentor Protégé Agreement approval submitted to SBA HQ on _____, therefore assuming its approval, the JV is considered “small” pursuant to 13 CFR 517 (b)(3)

Summary: Based on the information contained in the 8(a) firms business plan file, this writer’s numerous personal interviews with principals of both firms, the content and analysis of the Joint Venture and supporting documentation, analysis concludes that the need exists

for a joint venture to assist the 8(a) firm, and that the:

- 1) 8(a) firm lacks the capacity to perform the contract;
- 2) 8(a) firm will benefit substantially from award of the contract;
- 3) JV is fair and equitable;
- 4) JV will perform a substantial portion (15%) of the contract;
- 5) 8(a) firm will perform a significant portion (15%) of the JV's portion;
- 6) 8(a) concern will receive 51% profit of the contract.

8(a) Firm:

«FirmName»

| | |
|-----------------------------------|-------------------|
| Annual Sales Current Year | \$ 1,189,913 |
| Annual Sales Preceding Year | \$ 1,133,965 |
| Annual Sales Preceding Year | \$ 1,086,304 |
| Total Annual Sales | \$ \$3,410,182.00 |
| 3 Yr. Average Annual Sales (SACS) | \$ 1,136,727 |

Joint Venture Partner: «Mentor»

| | |
|---|------------------|
| Annual Sales Current Year | \$ 142,020,580 |
| Annual Sales Preceding Year | \$ 99,246,716 |
| Annual Sales Preceding Year | \$ 115,042,403 |
| Total Annual Sales | \$356,309,699.00 |
| 3 Year Average Annual Sales (IRS Returns) | \$ 118,769,899 |

Contract summary of the 8(a) firm

8(a) contract awards to date: ___ contract in the amount of \$___

JOINT VENTURE AGREEMENT:

The 8(a) firm and JV partner have submitted a request for approval of an official MPA dated: «MPADate». It is understood this Joint Venture Agreement is subject to the approval of the firms' Mentor Protégé Agreement submitted to SBA HQ on ____.

8(a) firm request approval of the proposed Joint Venture Agreement.

Name/Title

Date

Enclosures to be in the JV package:

Joint Venture Agreement
Copy of the Solicitation
Copy of the Contract Proposal
IRS Tax Returns – JV Partner – Current and prior year
Capability Statement – JV Partner

Financial Analysis of 8(a) firm

Three-year average sales and contract summary of the 8(a) firm